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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,742	08/14/2003	Wilhelm Geis	A91717	1741
30008	7590	06/02/2005		EXAMINER
GUDRUN E. HUCKETT DRAUDT				DOVE, TRACY MAE
LONSSTR. 53				
WUPPERTAL, 42289				
GERMANY				
			ART UNIT	PAPER NUMBER
			1745	

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/604,742	<b>Applicant(s)</b> GEIS ET AL.
	<b>Examiner</b> Tracy Dove	<b>Art Unit</b> 1745

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 14 August 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-9 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-9 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/25/05.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_ .

## DETAILED ACTION

### *Specification*

The disclosure is objected to because of the following informalities: at paragraph [0003] “The receiving shoe has electrical contacts for connecting to battery pack to electrical lines” is grammatically incorrect.

At paragraph [0006] “As a result of the height and the diameter of the cylindrical battery cells, relatively heavy, tall and, because...” is grammatically incorrect.

Appropriate correction is required.

### *Claims Analysis*

Claim 1 recites “for an electric power tool that comprises a tool housing with an electric motor arranged therein and a handle connected to the tool housing”, which is not given patentable weight because it is an intended use limitation. Examiner suggests the claims be amended to recite “An electric power tool comprising a tool housing with an electric motor arranged therein, a handle connected to the tool housing and a detachable battery pack; the battery pack comprising: ...”. All limitations of the claimed invention that recite elements of the electric power tool are not given patentable weight because the claims recite “A battery pack”.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites "in a longitudinal direction of the tool housing" and "longitudinal center axis of the tool housing", which is indefinite because the claimed battery pack does not include the tool housing. The electric power tool comprises the battery pack and the tool housing, thus, the claims should be amended accordingly.

Claim 1 recites the limitation "the drive motor". There is insufficient antecedent basis for this limitation in the claim.

Claim 2 recites "the battery pack is attached to the handle", however, the claimed "battery pack" does not comprise the handle. See also claim 3 that recites "the handle".

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Hershberger et al., US 5,977,746.

Hershberger teaches a battery pack having a plurality of battery cells that form a cluster of cells. Figure 1 shows the battery pack comprises a outer body 22 (protective housing) that houses the cells 30. The outer body includes a bottom housing 24 and a top housing 26 wherein the top housing includes a head (receiving shoe) having contact springs 38 and a locking tab that secures the battery pack to a complementary power consuming tool (3:35-65). The bottom housing serves as a support surface. Figure 4 shows the individual cells arranged in at least one row wherein at least one of the cells is displaced laterally. As clearly shown in at least Figures 1,

4 and 5 the bottom housing has a widened support surface where the displaced cells are located.

Figure 1 shows the wider portion of the outer body 22 is located in front of the receiving shoe.

Figure 4 shows the displaced row cells are adjacent (next to each other) and form a cross.

Regarding claims 7-9, see at least Figure 4 of Hershberger.

Thus the claims are anticipated.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hershberger et al., US 5,977,746.

Hershberger teaches a battery pack having a plurality of battery cells that form a cluster of cells. Figure 1 shows the battery pack comprises a outer body 22 (protective housing) that houses the cells 30. The outer body includes a bottom housing 24 and a top housing 26 wherein the top housing includes a head (receiving shoe) having contact springs 38 and a locking tab that secures the battery pack to a complementary power consuming tool (3:35-65). The bottom housing serves as a support surface. Figure 4 shows the individual cells arranged in at least one row wherein at least one of the cells is displaced laterally. As clearly shown in at least Figures 1, 4 and 5 the bottom housing has a widened support surface where the displaced cells are located.

Hershberger does not explicitly state the number of cells contained within the battery pack is twelve with six of the twelve being laterally displaced.

However, the invention as a whole would have been obvious to one having ordinary skill in the art at the time the invention was made because Hershberger teaches the number of cells (eight shown in the Figures) should be understood to only be exemplary (7:44-46). One of skill in the art would have found it obvious to vary the number of cells in the battery pack of Hershberger depending the power requirements of the device being powered by the battery pack. Duplication of parts (battery cells) for a multiplied effect (increased power) is considered obvious.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tracy Dove whose telephone number is 571-272-1285. The examiner can normally be reached on Monday-Thursday (9:00-7:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pat Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

May 25, 2005



TRACY DOVE  
PRIMARY EXAMINER